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Attorneys for ProTrade Sports, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PROTRADE SPORTS, INC., a Delaware
corporation,

Plaintiff,

v.

NEXTRADE HOLDINGS, INC., a Florida
corporation,

Defendant.

CASE NO.

COMPLAINT FOR DECLARATORY
JUDGMENT

I. NATURE OF THE CASE

1. This is an action for a declaratory judgment that plaintiff, which operates a website at protrade.com related to fantasy sports games, is not infringing any trademark, or other rights purportedly owned by defendant, a seller of "Pro-Trade" software for the trading of financial

1 securities. There is a need for such relief because defendant has asserted that plaintiff is infringing
2 its rights in the "Pro-Trade" trademark.

3 II. PARTIES

4 2. Plaintiff ProTrade Sports, Inc., ("ProTrade Sports") is a Delaware corporation with
5 its principal place of business at 155 Bovet Road, Suite 500, San Mateo, California.

6 3. Defendant NexTrade Holdings, Inc. ("NexTrade") is, on information and belief, a
7 Florida corporation with its principal place of business at 301 South Missouri Avenue, Second
8 Floor, Clearwater, Florida.

9 III. JURISDICTION AND VENUE

10 4. The Court has subject matter jurisdiction over the claims pursuant to 28 U.S.C. §§
11 1331 (federal question), 1338(a) (trademark action), and 28 U.S.C. § 1332, because there is
12 diversity of citizenship between plaintiff and defendant, and the matter in controversy exceeds
13 \$75,000, exclusive of interest and costs.

14 5. Venue is proper under 28 U.S.C. § 1391(b) and (d) because defendant is subject to
15 personal jurisdiction in this district, and a substantial part of the events giving rise to the claim
16 occurred here.

17 IV. INTRADISTRICT ASSIGNMENT

18 6. This action is properly filed in the San Francisco Division of the U.S. District Court
19 for the Northern District of California pursuant to Civil L.R. 3-2(c) and (d) because a substantial
20 part of the events giving rise to the claims set forth in this Complaint occurred in San Mateo
21 County

22 V. PERTINENT FACTS

23 7. Plaintiff ProTrade Sports operates a fantasy sports-related website at protrade.com.
24 The website is visited by sports fans that enjoy fantasy sports games where players "trade"
25 professional athletes and compete based on the performances of such athletes in real games.
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1 8. ProTrade Sports associates values with athletes based upon their contribution to
2 their teams' opportunity to win. This initial value is similar to the value of a financial stock, just
3 as the athlete's ongoing contributions can be considered similar to dividends.

4 9. ProTrade Sports allows fantasy sport players to compete with each other, by buying
5 and selling athletes at a market price created by the buying and selling of each athlete by fantasy
6 sports players. ProTrade's website is popular with sports enthusiasts, particularly persons who
7 have traditionally enjoyed playing in fantasy sports leagues.

8 10. ProTrade Sports filed two applications on June 3, 2004 to register its
9 "PROTRADE" trademark on the principal register at the U.S. Patent and Trademark Office. One
10 of the trademark applications has been designated as Serial No. 78/429,562 ("the '562
11 application"), and the second as Serial No. 78/429,567 ("the '567 application").

12 11. The '562 application seeks registration of the trademark in Class 38 for "Creating
13 and hosting an on-line sports fan community, narnely providing on-line chat rooms . . . among
14 computer users concerning fantasy sports games, fantasy sport stock trading, statistical analysis on
15 sports, sports teams and sports players and athletes."

16 12. The '562 application also seeks registration of the trademark in Class 41 for
17 "Providing an on-line, interactive website featuring sports and entertainment services, namely
18 organizing and conducting fantasy sports games, fantasy sports stock trading, and related contests
19 and sweepstakes; entertainment services, namely, providing a website featuring information and
20 statistical analysis on sports, sports teams and players."

21 13. The '567 application seeks registration of the trademark in Class 35 for "providing
22 and maintaining reports and statistical information about sports teams and athletes based on a
23 valuation methodology on athletes using proprietary statistical algorithms and the market
24 pressures of the users in the nature of consumer and on-line user information. . . ."

25 14. The United States Patent and Trademark Office has examined the '562 application
26 and approved it for publication, finding that it did not conflict with any other trademark
27 registrations.

1 15. The United States Patent and Trademark Office has examined the '567 application
2 and although it has raised some issues concerning the specific recitation of services, it has found it
3 does not conflict with any other existing trademark registrations.

4 16. Defendant NexTrade, on information and belief, sells software products to
5 companies and firms that trade in financial securities. In particular, NexTrade sells a software
6 product under the name "Pro-Trade" for software that enables its customers to comply with ECNs
7 (Electronic Communications Network) to allow for direct interaction with national financial
8 markets.

9 17. NexTrade operates a website at www.Nextrade.com. NexTrade's website states
10 that its software is "exclusively for market making firms, traditional brokers/dealers, professional
11 trading firms and the money management community."

12 18. NexTrade is, on information and belief, the owner of U.S. Trademark Registration
13 No. 2,317,995, issued on February 15, 2000 for "Pro-Trade." The registration indicates that it is
14 for "computer software and systems . . . for securities trading, matching, crossing, exchange
15 services and information included, but not limited to, the best bid and offer for specific issues,
16 order positioning, real time activity information, information regarding the securities industry,
17 information regarding advancing and declining issues, information regarding the most active
18 issues, a stock monitor, and a quote window."

19 19. The United States Patent and Trademark Office has not found that the NexTrade
20 trademark registration for "Pro-Trade" conflicts in any manner with ProTrade Sports' trademark
21 applications.

22 20. The term "ProTrade" is used by various companies, some of which are in the
23 financial securities business. There is a business in Los Angeles, for example, named "ProTrade
24 Capital Group," which is in the business of advising investors on foreign exchange markets.
25 ProTrade Capital Group's website is at www.protradefx.com.

26 21. ProTrade, Inc., the owner of the website at protradeinc.com, is a registered broker
27 involved in trading of agricultural futures and related securities.
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22. Forex ProTrade appears to be a Canadian company doing business in the United States at the website forexprotrade.com, advising clients on trading in gold, indices and stocks, .

23. NexTrade thus is not the only entity using the term "ProTrade," and not even the only entity in the financial securities business.

24. NexTrade has asserted that ProTrade Sports' use of its name "PROTRADE" infringes rights owned by it. Attached hereto as Exhibit A is a September 30, 2005 letter from NexTrade Holdings asserting infringement by ProTrade Sports.

VI. REQUEST FOR DECLARATORY RELIEF

25. There is a justiciable dispute between the parties as to whether ProTrade Sports is infringing any trademark rights owned by NexTrade.

26. ProTrade Sports is in the business of providing services to persons interested in fantasy sports.

27. The visitors to ProTrade Sports' website are primarily those interested in fantasy sports games.

28. NexTrade is in the business of selling sophisticated software to financial securities firms.

29. There is no likelihood that ProTrade Sports' customers or prospective customers will believe that it is affiliated with NexTrade (to the extent they have heard of NexTrade).

30. NexTrade is unaware of any evidence of actual confusion as a result of ProTrade Sports' activities.

31. ProTrade Sports has not violated NexTrade's rights, including any trademark rights, or committed unfair competition, by its use of its "PROTRADE" name.

32. ProTrade Sports is entitled to a declaratory judgment that it has not infringed any of NexTrade's trademark rights, or committed unfair competition, by reason of its use of "PROTRADE" in connection with its protrade.com website.

VII. PRAYER FOR RELIEF

WHEREFORE, ProTrade Sports prays for the following relief:

1 A. A declaratory judgment that:

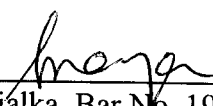
- 2 1. ProTrade Sports' use of "PROTRADE" for services related to fantasy
3 sports, including its use of "PROTRADE" on its website, has not created
4 any likelihood of confusion and has not otherwise infringed any trademark
5 rights owned by NexTrade;
6 2 ProTrade Sports has not committed unfair competition as a result of its use
7 of "PROTRADE" for services related to fantasy sports, including its use of
8 "PROTRADE" on its website.

9 B. A preliminary and permanent injunction prohibiting defendant, its affiliates, agents,
10 servants, employees and attorneys, and any and all other persons in active concert or participation
11 with them, from improperly interfering with ProTrade Sports' business, including from asserting
12 in the United State Patent and Trademark Office or otherwise that ProTrade Sports' use of
13 "PROTRADE" violates any rights owned by NexTrade;

14 C. For an award of attorneys' fees and costs to ProTrade Sports to the extent permitted
15 by law; and

16 D. For such further and other relief as the Court deems just and proper.
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1 DATED: October 6, 2005.

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28 Attorneys for Plaintiff ProTrade Sports, Inc.

Exhibit A

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September 30, 2005

Via FedEx

Mary Ann Barnes, CEO
ProTrade Sports, Inc.
155 Bovet Road, Suite 500
San Mateo, CA 94402

Re: NexTrade Holdings, Inc.

Dear Ms. Barnes:

The law firm of Fee & Jeffries, P.A., serves as intellectual property litigation counsel to NexTrade Holdings, Inc. ("NexTrade"), the owner of the federally registered Pro-Trade® trademark, U. S. Registration No. 2317995, issued on February 15, 2000. NexTrade uses its federally registered Pro-Trade® mark in connection with Internet-based securities trading. Specifically, NexTrade's Pro-Trade® computer interface screen includes a real-time scrolling stock ticker and facilitates the on-line trading of stocks and derivatives, including commodities.

NexTrade has become aware that ProTrade Sports, Inc. ("PSI") applied for federal registration of its use of the "ProTrade" mark, which mark is identical to NexTrade's federally registered Pro-Trade® mark, with the sole exception of a missing hyphen. Please be advised that NexTrade opposes the issuance of such a registration and is filing its Notice of Opposition with the United States Patent and Trademark Office.

NexTrade has also learned that PSI is using the trademark "ProTrade" in commerce in connection with Internet-based services focused on the trading of "stock" in professional athletes. PSI's website, like NexTrade's Pro-Trade® computer interface screen, facilitates on-line trading activities and features a scrolling real-time stock ticker. As a result of these features, PSI's website mimics on-line securities trading. Moreover, PSI's website contains customer testimonials explaining how securities trading concepts govern the use of PSI's services offered under the ProTrade mark.

Please be advised that PSI's use of the "ProTrade" mark is not authorized or licensed by NexTrade and that NexTrade strenuously objects to PSI's use of the "ProTrade" mark.

Mary Ann Barnes, CEO
September 29, 2005
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Moreover, NexTrade hereby demands that PSI immediately and permanently cease and desist from its use of the "ProTrade" mark.

NexTrade reasonably believes PSI's use of the "ProTrade" mark violates NexTrade's federally protected trademark rights and 15 U.S.C. §1114. Specifically, PSI's use of the "ProTrade" mark creates a likelihood of confusion, mistake or deception in light of NexTrade's federally registered Pro-Trade® mark. Due to NexTrade's longstanding federal registration, PSI will be deemed to have knowingly and intentionally infringed upon NexTrade's trademark rights since the inception of PSI's infringing activities. Moreover, upon your receipt of this letter, you and PSI are on actual notice of both NexTrade's federally protected trademark rights and NexTrade's demand that PSI immediately cease such use.

As a consequence of PSI's infringement of NexTrade's federally registered Pro-Trade® mark, NexTrade is entitled to remedies including, but not limited to an award of the greater of NexTrade's damages or PSI's profits resulting from the infringing activity, and NexTrade's attorneys' fees and costs. Under federal law, you, and any other person who controls and directs PSI's infringing use of "ProTrade," will bear joint and several liability to NexTrade for PSI's infringement.

Please confirm in writing, to be received by this office no later than October 5, 2005, that PSI will promptly, completely, and voluntarily withdraw its application for registration of the "ProTrade" mark, and immediately and permanently cease and desist from PSI's use of the "ProTrade" mark. The lack of such a timely and unequivocal response will be interpreted as a refusal to comply. To the extent that PSI desires to resolve issues regarding its financial liability to NexTrade after complying with the demands in this letter, NexTrade would welcome such discussion.

I trust that you understand the seriousness of this matter and that NexTrade's position has been made clear. Please govern yourself accordingly.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Fee", with a large, sweeping flourish above it.

Richard E. Fee

REF:eff

cc: NexTrade Holdings, Inc.